

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Teresa Whitaker Carroll,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 5:17-cv-312-BHH
	)	
Nancy A. Berryhill, Acting	)	
Commissioner of Social Security,	)	
	)	
Defendant.	)	
_____	)	

**ORDER**

On October 8, 2018, Plaintiff filed a motion for attorney's fees pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412, seeking attorney's fees in the amount of \$7,529.44, representing 38.5 attorney hours at the hourly rate of \$195.57. On October 18, 2018, the parties filed a stipulation for an EAJA award, notifying the Court that the parties have agreed to an award of \$7,000.00 in attorney's fees as compensation for all legal services rendered on behalf of Plaintiff in this action.

Attorney's fees may be awarded pursuant to EAJA where the government's position is not substantially justified. The substantial justification test is one of reasonableness in law and fact. See *Pierce v. Underwood*, 487 U.S. 552, 565 (1988). The district court has broad discretion to set the attorney fee amount. "[A] district court will always retain substantial discretion in fixing the amount of an EAJA award. Exorbitant, unfounded, or procedurally defective fee applications . . . are matters that the district court can recognize." *Hyatt v. North Carolina Dep't of Human Res.*, 315 F.3d 239, 254 (4th Cir. 2002) (citing *Comm'r v. Jean*, 496 U.S. 154, 163 (1990)). Moreover, the court should not only consider the "position taken by the United States in the civil action," but also the "action or failure

to act by the agency upon which the civil action is based.” 28 U.S.C. § 2412(d)(2)(D), as amended by P.L. 99-80, § 2(c)(2)(B).

After consideration, it is hereby

**ORDERED** that Plaintiff’s motion (ECF No. 22) is withdrawn in accordance with the parties’ stipulation, and the Court approves the parties’ agreement and awards Plaintiff attorney’s fees pursuant to EAJA in the amount of \$7,000.00. In accordance with the parties’ stipulation, the Commissioner will determine whether Plaintiff has any outstanding federal debt to be offset from the attorney’s fees, and if Plaintiff has no outstanding federal debt, then the Commissioner will honor Plaintiff’s assignment of attorney’s fees to counsel and make the check payable to Plaintiff’s counsel. However, if Plaintiff has outstanding federal debt, then the Commissioner will make the check payable to Plaintiff directly and deliver the check to the business address of Plaintiff’s counsel, and the amount of fees payable to Plaintiff will be the balance of the stipulated attorney’s fees remaining after subtracting the amount of Plaintiff’s outstanding federal debt. If Plaintiff’s outstanding federal debt exceeds the stipulated amount of attorney’s fees, then the stipulated amount will be used to offset that debt and no amount shall be paid to Plaintiff.

**IT IS SO ORDERED.**

/s/Bruce H. Hendricks  
The Honorable Bruce H. Hendricks  
United States District Judge

November 1, 2018  
Charleston, South Carolina